

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
Crl Petn No.48 of 2022

Smt. Nanda Rani Das

..... Petitioner(s)

V E R S U S

The State of Tripura

..... Respondent(s)

For Petitioner(s) : Mr. S. Lodh, Advocate.

For Respondent(s) : Mr. S. Debnath, Addl. P.P.

HON'BLE THE CHIEF JUSTICE (ACTING)
JUDGMENT & ORDER(ORAL)

Date of hearing & judgment : 10th January, 2023

Heard Mr. S. Lodh, learned counsel appearing for the petitioner and also heard Mr. S. Debnath, learned Additional Public Prosecutor appearing for the State-respondent.

[2] The instant petition has been filed by the petitioner to challenge the impugned order dated 16.12.2021 passed by the learned Special Judge (NDPS), Sepahijala, Bishalgarh in Bishalgarh P.S. Case No.77 of 2021 and seeks release of the seized vehicle Maruti Van bearing No.TR-01-AC-0599.

[3] Brief facts, leading to this case, are that in connection with Bishalgarh PS Case No.77 of 2021, a Maruti Van bearing registration No.TR-01-AC-0599 was seized and thereafter he filed an application before the learned Special Judge (NDPS), Sepahijala, Bishalgarh, Tripura

and after hearing the parties vide impugned order dated 16.12.2021 rejected the prayer of the petitioner.

[4] It is alleged that the petitioner was the registered owner of the said vehicle (Maruti Van) and the Inspector of Bishalgarh police station lodged a written complaint *inter alia* alleging that on 03.10.2021 at about 17:13 hours, the Officer-in-charge of Bishalgarh P.S received an information over his mobile phone that one Maruti Van was coming from Agartala with huge quantity of Eskuf (Cough Syrup). After the GD entry was made, the police conducted raid, search and seizure as per NDPS Act and detained the vehicle along with the driver and from the said Maruti Van bearing registration No.TR-01-AC-0599, 480 numbers of bottles of Eskuf (Cough Syrup) were seized.

[5] On receipt of the written complaint, a criminal case was registered vide Bishalgarh PS Case No.77 of 2021 dated 03.10.2021 against the driver of the vehicle. After registration of the case, police started investigation and arrested the driver of the vehicle who happened to be son of the petitioner. The petitioner is the registered owner of the aforesaid vehicle and the same was being driven by her elder son. It was further alleged that without intimating anything to the petitioner, her son allegedly carried the Eskuf. It was also alleged that the vehicle is a passenger vehicle

and the petitioner got the information that the driver of the vehicle carried Eskuf in her vehicle.

[6] The petitioner filed an application before the learned Special Judge (NDPS), Sepahijala District, Bishalgarh for releasing the vehicle in favour of the petitioner owner. The prayer of the petitioner was rejected by the learned Special Judge on the ground that the petitioner failed to make out *prima facie* case in her favour to get the vehicle released. The operative portion of the order reads as follows :

“In view of the facts and circumstances stated above, I am of the considered opinion that the petitioner has failed to make out a *prima facie* case in her favour to get the vehicle released. Accordingly the prayer for release of the vehicle filed on 10.12.2021 stands rejected. However, it is also true that at this stage, the confiscation of the seized vehicle u/s 60 of the NDPS Act cannot be made as per prayer of the I/O. So that portion of the prayer of the I/O is rejected. Thus it is for investigating agency and for the prosecution to consider whether the seized vehicle may be required to be sold in view of the second proviso to section 63(2) of the NDPS Act read with the notification dated 16.01.2015 issued u/s 52(A) of the NDPS Act by the Central Govt. wherein Para 9(5)(e) provides for sale of seized conveyance and in that event the sale proceeds shall apply subject to the provisions of sub section (2) of the Section 63 of the Act.

[7] Being aggrieved and dissatisfied with the order passed by the learned Special Judge, Sepahijala District, Bishalgarh, the petitioner filed this present petition seeking the following relief :

“(I) ISSUE NOTICE, calling upon the respondent, to show cause as to why an appropriate Direction/Order, shall not be issued, for quashing/setting aside impugned Order dated 16.12.2021 (Annexure-4 infra), passed in Bishalgarh PS Case No.77 of 2021, by the Id. Special Judge (NDPS), Sepahijala, Bishalgarh, (Sri A. Debnath), and thereafter, release (zimma) the seized vehicle Maruti Van, bearing No. TR-01-AC-0599, in favour of the petitioner on any terms and conditions;

- (II) In the Ad-interim and thereafter, in the Interim, an Order in terms of i. above;
- (III) After hearing the parties, be pleased to make an Order absolute in terms of i. and ii. above;
- (IV) Call for the records appertaining to this petition;
- (V) Costs of and incidental to this proceeding;
- (VI) Any other relief(s) as to this Hon'ble High Court may deem fit and proper;"

[8] Mr. S. Lodh, learned counsel appearing for the petitioner submits that the petitioner is not an accused person and further contends that for the fault of the son of the petitioner, the petitioner should not suffer. He further contends that there is no such allegation till date against the petitioner and prays for setting aside the impugned order dated 16.12.2021 passed by the learned Special Judge (NDPS), Sepahijala, Bishalgarh in Bishalgarh P.S. Case No.77 of 2021 and also seeks release of the seized vehicle Maruti Van bearing No.TR-01-AC-0599.

[9] On the other hand, Mr. S. Debnath, learned Additional Public Prosecutor vehemently opposed the petition contending that the learned Special Judge did not commit any error in passing the order. The learned Judge passed the order after appreciating the evidence on record. Accordingly, he prays that the criminal petition filed by the petitioner be dismissed.

[10] After hearing learned counsel for the respective parties, this Court is of the considered view that the petitioner failed to make out any

case that the vehicle in question has been detained unauthorisedly and cannot be believed that the son of the petitioner is using the vehicle. It is reasonably presumed that the acts which are committed by him are not known to the mother/petitioner who is the owner of the vehicle. The petitioner cannot be so ignorant of the acts committed by her accused son. This Court finds no merit in the petition and directs dismissal of the same. The order dated 16.12.2021 passed by the learned Special Judge (NDPS), Sepahijala, Bishalgarh in Bishalgarh P.S. Case No.77 of 2021 is affirmed.

[11] Pending application(s), if any, also stands disposed of.

CHIEF JUSTICE (ACTING)



सत्यमेव जयते

Dipesh